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Federal Communications Commission

DA 99-654

DISPATCHED BY

Before the
Federal Communications Commission
Washington, D.C. 20554

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| In the Matter of |) | |
| |) | |
| Amendment of Section 73.202(b), |) | MM Docket No. 98-2 |
| Table of Allotments, |) | RM-9217 |
| FM Broadcast Stations. |) | |
| (Hawesville and Whitesville, Kentucky) |) | |

REPORT AND ORDER
(Proceeding Terminated)

Adopted: March 24, 1999

Released: April 2, 1999

By the Chief, Allocations Branch:

1. The Commission has before it a *Notice of Proposed Rulemaking* ("Notice") issued at the request of WLME, Inc., licensee of Station WXCM(FM), Channel 264A, Hawesville, Kentucky, which proposed the reallocation of Channel 246A from Hawesville to Whitesville, Kentucky as that community's first local aural service. The *Notice* also proposed that Station WXCM's license be modified to specify Hawesville as its new community of license. WLME filed comments in response to the *Notice*, reiterating its intention to apply for Channel 246A at Whitesville, if allotted, and to construct the modified facilities. We received no other comments.

2. WLME filed its proposal for reallocation of Channel 246A from Hawesville to Whitesville in accordance with the provisions of Section 1.420(i) of the Commission's Rules, which permits the modification of a station's license to specify a new community of license while not affording other interested parties the opportunity to file competing expressions of interest in the proposed allotment. See *Modification of FM and TV Authorizations to Specify a New Community of License* ("Change of Community R&O"), 4 FCC Rcd 4870 (1989), *recon. granted in part* ("Change of Community MO&O"), 5 FCC Rcd 7094 (1990). Whitesville is an incorporated community with a 1990 U.S. Census population of 682. WLME stated that the new allotment would provide Whitesville with its first local aural service, and that it would not deprive Hawesville of local aural service because Station WKCM(AM), providing a full-time aural service, remains licensed to the community.

3. In the *Notice*, we noted stated the reallocation would not give rise to the Commission's concerns with migration of stations from rural to urban areas, because the city-grade contour of Station WXCM covers only 16% of the nearby urbanized area of Owensboro, Kentucky, obviating the necessity of a *Tuck* analysis. See *Headland, Alabama, and Chattahoochee, Florida*, 10 FCC Rcd 10,352 (1995) and *Faye and Richard Tuck*, 3 FCC Rcd 5374 (1988). In any event, we requested that WLME provide more detailed information as to areas that each would gain as well as lose reception service due to the reallocation to Whitesville and the accompanying transmitter relocation. We requested the population of these respective areas and the number of aural services

they receive and would receive after the reallocation. In response, WLME notes that approximately 116,818 persons would be served by Station WXCM as a Whitesville station, which represents a gain of 75,379 persons. A total of 9,358 persons would lose the reception service they once received as a Hawesville station. Thus, a Whitesville station would have a net gain of 66,021 persons. WLME also states that after the proposed change of community of license of the Hawesville station, the loss area as well as the gain area would be well-served with at least five full-time aural services each.

4. We believe that the public interest would be served by reallocating Channel 246A from Hawesville to Whitesville, Kentucky, and modifying Station WXCM's license to specify Whitesville as its community of license. The reallocation will permit the provision of a first local aural transmission service to Whitesville, thus fulfilling Priority 3 of the Commission's allotment priorities.¹ We recognize that the reallocation will result in the potential loss of service to approximately 10,000 persons. However, Hawesville will not lose its sole local aural transmission service, and, moreover, Station WKCM's signal will continue to be received in the community. Moreover, a Whitesville station would provide a 60 dBu service to greater than 75,000 additional persons, and we find that this gain outweighs the 10,000 person loss due to the removal of the Hawesville station.² In regard to this loss of service, we note that this entire area and population will continue to receive at least five aural reception services. The area, therefore, is considered to be well-served. See *Family Broadcasting Group*, 53 RR 2d 662 (Rev. Bd. 1983). Our engineering analysis also reveals that approximately 16% of the urbanized area is within Station WXCM's city-grade contour (70 dBu), and, therefore, no *Tuck* analysis is required. See *Headland, Alabama, supra*.

5. Channel 246A can be allotted to Whitesville at coordinates 37-48-39; NL; 86-53-18 WL consistent with the Commission's minimum distance spacing and the requirement for coverage of the entirety of the community of license with a 70 dBu signal.

¹ The FM Allotment priorities are: (1) first fulltime aural service; (2) second fulltime aural service; (3) first local service; and (4) other public interest matters. Co-equal weight is given to priorities (2) and (3). See *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88, 92 (1982).

² Net population gain resulting from staff analysis: 84,546 gain – 10,404 loss = 74,144; WLME's net population gain: 75,379 – 9,358 = 66,021.

6. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g), and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b), and 0.283 of the Commission's Rules, IT IS ORDERED, That effective May 17, 1999, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the communities listed below, to read as follows:

| <u>City</u> | <u>Channel No.</u> |
|-----------------------|--------------------|
| Hawesville, Kentucky | ---- |
| Whitesville, Kentucky | 246A |

7. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the license of WLME, Inc., for Station WXCM(FM), IS MODIFIED to specify operation at Whitesville, Kentucky instead of Hawesville, Kentucky as its community of license, subject to the following conditions:

- (a) Within 90 days of the effective date of this *Order*, the license shall submit to the Commission a minor change application for a construction permit (Form 301).
- (b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620.
- (c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules.

8. Pursuant to Commission Rule Section 1.1104(k) and (2)(k), any party seeking a change of community of license of an FM or television allotment or an upgrade of an existing FM allotment, if the request is granted, must submit a rulemaking fee when filing its application to implement the change in community of license and/or upgrade. As a result of these proceedings, WLME, Inc., licensee of Station WXCM(FM), is required to submit a rulemaking fee in addition to the fee required for the applications to effect the change in community of license.

9. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

10. For further information concerning the above, contact J. Bertron Withers, Jr., Mass Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau